

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

BYRON SMITH §
VS. § CIVIL ACTION NO. 1:14-CV-148
R. W. RIVERA, ET AL. §

**ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Byron Smith, a federal prisoner confined at the Federal Correctional Institution in Beaumont, Texas, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against Warden R. W. Rivera, Lieutenant Britt, Captain Wilson, Case Manager Coleman, Lieutenant Martinez, Case Manager Herberich, Unit Secretary Pennington, Case Manager Jones, Counselor Davis, Case Manager Singleton, Officer Critter, Officer Prejean, and Counselor Collins.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends dismissing the action pursuant to 28 U.S.C. § 1915(e) as frivolous and for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the

objections are without merit. Further, plaintiff's claim that female correctional officers made lewd comments about the male inmates during a search does not state a cognizable constitutional claim. *See Jane Doe 5 v. City of Haltom City*, 106 F. App'x 906, 908 (5th Cir. 2004) (holding that verbal sexual harassment does not violate an inmate's constitutional rights).

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (document no. 15) is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

So **ORDERED** and **SIGNED** this 21 day of November, 2015.



Ron Clark, United States District Judge